STATE OF VERMONT

SUPERIOR COURT
Chittenden Unit

CIVIL DIVISION
Docket No. 937-10-17 Cncv

WHITEYVILLE PROPERTIES, LLC,
Appellant,

v.

JEFFERY DIEHL,
Appellee.

RULING ON APPEAL

This is an appeal from a decision issued by the City of Burlington's Housing Board of Review ("Board") on September 9, 2017. Appellant Whiteville Properties, LLC appeals the Board's decision on procedural and substantive grounds. Michael D. Johnson, Esq. represents Whiteyville and Appellee represents himself. The City of Burlington appears as an interested party represented by Richard W. Haesler, Jr., Esq.

Background

The following background is recounted for purposes of deciding the pending appeal. Jeffrey Diehl and Tyler Rivard petitioned the Board for return of a portion of their security deposit, which Appellant retained after Appellee and his roommates vacated their apartment at the end of their lease term. Board members Josh O'Hara and Patrick Kearney were appointed to serve as Hearing Officers and conducted a hearing on August 21, 2017. Appellee attended the hearing, and property manager Eric Hanley represented Appellant.

The Board made the following findings of fact. Appellant owns 26 Summer Street, Apartment 2. Appellee and four roommates rented the unit under a written lease, and Eric Hanley manages the property. The written lease ran from June 1, 2015 to May 25, 2017.

Appellee and his roomates paid a security deposit of $3,295.00, and rent was $3,295.00 per month. Under the terms of the lease, Appellant was to return the security deposit at the end of the lease minus any amounts withheld for damage to the premises. When Appellee and his roommates moved out of the premises, Appellant withheld $1,243.54 of the security deposit and reimbursed Appellees for $2,084.41 of the deposit, plus accrued interest. Appellant also provided Appellee and his roommates with an itemized list of deductions from the security deposit, as follows:

1. Cleaning Charges: $250;
2. Burlington Electric Bill: $41.54;

3. Extra Trash Removal: $500;
4. Carpets Professionally Cleaned: $352;
5. Dislodged Smoke Detectors (4 x 25): $100.

Appellee testified that he and his roommates thoroughly cleaned the apartment before moving out. Hanley indicated on the move-out inspection sheet that some cleaning needed to be done, but most of the items listed were marked "okay." He marked the bedroom floors as "need cleaning." Appellee claimed that there were no stains on the carpets and they were vacuumed. He argued that any cleaning needed was part of normal wear and tear.

Both parties testified regarding the electric bill. Appellant conceded that the balance was for the reading period from May 26 through June 1, 2017, after Appellee and his roommates vacated the premises.

Both parties testified regarding the trash removal. Appellant provided a trailer at the property and directed tenants to throw their trash into the trailer. Appellant put some items into the trailer because that is what Hanley told him to do; he was not told that he would be charged for the use of the trailer. Hanley provided receipts from Gauthier's and All Cycle as evidence of the cost of trash removal. The receipt from Gauthier's indicated $225 for extra trash, not $321.68 as Hanley indicated. The $321.68 total included the charge for weekly service at the property. Hanley claimed that the extra trash removal cost was split between three units in the building, and the share for Appellee's unit was $500. The lease provides that any tenant whose trash is found outside the designated container will be fined $500 if the trash is identified to an individual tenant.

Both parties testified regard the four allegedly dislodged smoke detectors. Hanley testified that four smoke detectors did not have batteries in them and were not connected. The move-out inspection sheet did not indicate that there were any dislodged smoke detectors. Appellee testified that neither he nor his roommates disconnected the smoke detectors.

The Board concluded that none of the deductions from the security deposit were proper. The cleaning done in the apartment was part of normal wear and tear and any damage to the smoke detectors was not attributable to Appellee or his roommates. Appellee did not leave any trash outside of the containers provided by Appellant, and none of the alleged extra trash could be identified as that of Appellee. The Board ordered Appellant to return $1,243.54 of the principal amount of the security deposit, plus interest.

Discussion

Appeals from decisions of the Housing Board of Review under 24 V.S.A. § 5006 are governed by V.R.C.P. 74. In re Soon Kwon, 2011 VT 26, ¶ 6, 189 Vt. 598. The court reviews the decision of the Board "on the record" rather than by conducting a new hearing. Id. (citing State Dep't of Taxes v. Tri-State Indus. Laundries, Inc., 138 Vt. 292, 294–95 (1980)). Unless the court determines that it must take evidence or appoint a referee for proper disposition of the matter, the court reviews the record of the hearing and exhibits acted upon by the Board. *See* 24 V.S.A. § 5006(b); V.R.C.P. 74(d).

Appellant challenges two aspects of the Board's decision. First, Appellant argues that the Board did not have a quorum as required by BCO § 18-54. Second, Appellant claims that the Board's findings "are wholly unsupported by the facts and are in complete disagreement and without regard to the contract between the parties."

Burlington's ordinances provide that "[i]n order to conduct a hearing pursuant to a request, a majority of the board must be present, provided that the board may, for purposes of expedition or in cases of emergency, designate one (1) or more of its members to sit as hearing officer(s) to hear and decide matters brought before the board." BCO § 18-54. In first-instance security deposit hearings, a majority of the Board need not be present because the matter is not an appeal as provided by 24 V.S.A. § 5005(c)(4). In re Soon Kwon, 2011 VT 26, ¶ 21, 189 Vt. 598 (mem.). The Board was therefore within its authority to designate two members to conduct the hearing. Therefore, the Court will not reverse the Board's decision for lack of a quorum.

Appellant argues that the facts do not support the Board's findings and "are in complete disagreement and without regard to the contract between the parties." The Court has reviewed the audio recording of the hearing, the exhibits that the Board considered, and the Board's decision, and concludes that the evidence supports the Board's findings of fact.

Vermont's landlord-tenant statutes and Burlington's ordinances enumerate the limited, allowable deductions from a security deposit. A landlord may withhold a security deposit for "(1) nonpayment of rent; (2) damage to property of the landlord, unless the damage is the result of normal wear and tear or the result of actions or events beyond the control of the tenant; (3) nonpayment of utility or other charges which the tenant was required to pay directly to the landlord or to a utility; and (4) expenses required to remove from the rental unit articles abandoned by the tenant." 9 V.S.A. § 4461(b)(1)–(4); see also BCO § 18-120(a)(1) (permitting landlords to require a deposit as security "against damage beyond normal wear and tear to the premises which is attributable to the tenant, against nonpayment of rent, against nonpayment of utility or other charges which the tenant was required to pay directly to the landlord or to a utility, and against expenses required to remove from the rental unit articles abandoned by the tenant.").

It was within the Board's authority to determine whether the deductions for cleaning resulted from damage beyond normal wear and tear. The Board concluded, based on the evidence before it, that there was no damage beyond wear and tear. The Board also found, based on the evidence, that none of the excess trash was attributable to the Appellee or his roommates, that they had not left trash outside of the designated receptacles, and that they were not responsible for the allegedly dislodged smoke detectors. Therefore, the Board properly determined that Appellant could not properly deduct any of the claimed amounts from the security deposit..

Appellant argues that it is entitled to some or all of these claimed deductions under the parties' lease. However, the Board's decision is limited to what a landlord may or may not deduct from the tenants' security deposit. Whether Appellant is entitled to recover the claimed

amounts under the parties' lease is a separate legal matter that is beyond the Board's jurisdiction to determine in the context of a security deposit hearing.

For the reasons stated above, the Court will not disturb the Board's decision.

ORDER

The Housing Board of Review's September 9, 2017 Findings of Fact, Conclusions of Law, and Order is *affirmed.*

Dated this 18th day of December, 2017

Robert A. Mello, Superior Judge